NOTIFICATION.

No. 89—L. C. dated, Bangalore, 3rd October 1910.

Under Rule 40 of the Rules for the conduct of business of the Mysore Legislative Council, the accompanying report of the Select Committee on the Mysore Insolvency Bill is published for general information.

By Order,
S. HIRIYANNAIYA,
Secretary, Mysore Legislative Council.

Report of the Select Committee on the Mysore Insolvency Bill.

We, the members of the Select Committee to whom the above Bill was referred for consideration, have the honour to submit the following report.

We entertained some doubt whether such an elaborate law as the one now embodied in the Bill was needed for Mysore in its present condition, and the question whether it would not be better to restore Chapter XX of the existing Civil Procedure Code to the Civil Procedure Bill, now under revision by the legislature, also engaged our attention. It was, however, pointed out to us that the Bill is a self-contained enactment, fuller than the fragmentary provision of law to be found in the Civil Procedure Code, under which applications for insolvency can be filed by a judgment-debtor only when he has been arrested or his property attached, or by a creditor, only after he has obtained a decree. While, under the Bill, the opportunities for taking advantage of the benefits of the Insolvency Law have been increased, facilities have also been afforded for getting fraudulent alienations of the judgment-debtor's property summarily set aside, that is, without the need for the expensive and protracted proceedings of a regular suit. These considerations have induced us to accept, though with some hesitation, the Bill as introduced into the Council. We note that a similar difficulty was experienced by certain Local Governments in British India.

A few changes have been made by us which are explained below :—

Clause 3.—Sub-clause (2) of this clause has been omitted, as the necessary provision will be made in the Civil Courts Regulation which is proposed to be amended in connection with the Small Cause Courts Bill now before the Council. We have also slightly recast the wording of sub-clause (1) as follows :—

"(1) The jurisdiction under this Regulation shall be exercised by the District Courts."

Clauses 9 and 10.—To make the meaning clear, we have substituted the words "petitioning creditor" for the word "petitioner" in clause 9, where it first occurs, and have added at the end of clause 10 the words "such representative being substituted as the Court may direct," so as to provide for proper representation in proceedings where the debtor concerned dies after the insolvency proceedings have been set in motion.

Clause 16, sub-clause (3).—We consider this provision, which makes the property of which the insolvent has only the "reputed" ownership available to his creditors in insolvency, unsuited to Mysore, as it is meant to be applicable only to large commercial centres. The sub-clause has therefore been omitted.

Clause 21, sub-clause (2).—We have omitted this sub-clause, as there is no such enactment as is referred to in force in Mysore.

Clause 25.—We have omitted this clause providing a special mode of proof (as by sending affidavits through post) as, in a small State like Mysore, parties can appear in Courts without much inconvenience.

Clause 28, sub-clause (1).—We have omitted the words "certain or contingent" occurring here, as it is doubtful whether the value of contingent rights can be fixed with sufficient approximateness for practical purposes, and as it would be as much as may be fairly expected in such cases to provide for the discounting of "future" debts at their present worth. We may note also that the word "contingent" has not acquired a definite meaning in Indian Law.

Clause 36.—The clause as it stands refers mainly to English marriage settlements. But as we think that similar protection is deserved in the case of marriage gifts (especially those that constitute Stridhana) we have altered the phraseology a little, *viz.*, by substituting "at or" for "before and," in lines 2 and 3 of this clause.

Clause 46.—In sub-clause (3) of this clause provision has been made for an appeal to the Chief Court in certain cases with the previous permission of the District Court or the Chief Court. We consider it unnecessary to introduce this novel provision into the procedure of the Courts of the State and have, instead, provided for revision in such cases, as well as in cases falling under sub-clause (1). The proviso has therefore been omitted and the following has been substituted for sub-clause (3):—

"(3) The Chief Court may, for the purpose of satisfying itself as to the legality or correctness of any order of a District Court passed under sub-section (1) or of any order other than those mentioned in sub-section (2), call for the case and pass such order with respect thereto as it thinks fit."

Clause 49.—We have slightly recast the wording of this clause as follows:—

"49. Subject to any rules made under this Regulation, it shall be competent to the Court before which proceedings are taken under this Regulation to decree costs of such proceedings including the costs of maintaining a debtor in the Civil prison in such manner as it thinks fit."

Clause 53.—This is another provision for which there is no need in Mysore. We have accordingly omitted it.

Clause 54.—As the provisions in the Bill inapplicable to the State have been omitted, and as there is no great diversity of conditions between different places in the State, we consider it unnecessary to retain this clause.

We have also changed references in the Bill to the old Civil Procedure Code to the corresponding provisions of the new Civil Procedure Code about to be enacted, *viz.*, the word and figure "Section 68," for "Section 320" in line 3 of sub-clause (1) of clause 21 and the words and figures "paragraphs 2 to 10 of the Third Schedule" for "Sections 320 to 325" in the same sub-clause, and have substituted the word "Mysore" for the words "the territories of Mysore" wherever it occurs, *vide* Section 3 (24) of the General Clauses Regulation. The word "January" in sub-clause (3) of clause 1 has also been omitted, as it would be well to leave the date on which the Regulation is to come into force to be fixed later on.

As the few changes made by us have been set forth in this report, we consider it unnecessary to republish it.

H. V. NANJUNDAYYA.

30th September 1910. C. SRINIVASIENGAR.

I approve of the draft report except on the two points noted below:—

1. I would retain clause 25 of the Bill as it now stands. It facilitates the proof of the claim of a creditor who may be residing at a great distance from the Court-house though within the Mysore State, or who may be a merchant carrying on business in Delhi or Benares, without much cost and trouble. There are also safeguards against false claims being advanced, for the Court may call for proof of the claim at any time either on its own motion or at the instance of any one of the other creditors. The receiver also may move the Court for removing any creditor from the list.

2. I would also retain clause 53 of the Bill intact. It is nothing less than a crime to borrow money from any person without disclosing that the borrower is an undischarged insolvent. A clause of this kind is essential.

S. NARAYANA RAO.

I approve of the above report subject to the following remark:—

I am of opinion that the word "propriety" should be inserted between the words "legality" and "or" in clause 46, para 3, so that full powers of revision on matters of law and fact may be exercised by the Chief Court.

A. RAMANNA.